

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1462

AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 4-6-2-1.5, AS AMENDED BY P.L.78-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1.5. (a) Whenever any state governmental official or employee, whether elected or appointed, is made a party to a suit, and the attorney general determines that said suit has arisen out of an act which such official or employee in good faith believed to be within the scope of the official's or employee's duties as prescribed by statute or duly adopted regulation, the attorney general shall defend such person throughout such action.

(b) Whenever a teacher (as defined in IC 20-18-2-22) is made a party to a civil suit, and the attorney general determines that the suit has arisen out of an act that the teacher in good faith believed was within the scope of the teacher's duties in enforcing discipline policies developed under IC 20-33-8-12, the attorney general shall defend the teacher throughout the action.

(c) **Not later than August 15 of each year:**

(1) **the attorney general shall draft; and**

(2) **the state superintendent of public instruction shall disseminate in:**

(A) **written;**

(B) **electronic; or**

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(C) other;
form;

a notice to each teacher concerning the teacher's qualified immunity under IC 20-33-8-8(b)(3) and rights under this section.

~~(c)~~ (d) Whenever a school corporation (as defined in IC 20-26-2-4) is made a party to a civil suit and the attorney general determines that the suit has arisen out of an act authorized under IC 20-30-5-0.5 or IC 20-30-5-4.5, the attorney general shall defend the school corporation throughout the action.

~~(d)~~ (e) A determination by the attorney general under subsection (a), (b), or ~~(c)~~ (d) shall not be admitted as evidence in the trial of any such civil action for damages.

~~(e)~~ (f) Nothing in this chapter shall be construed to deprive any such person of the person's right to select counsel of the person's own choice at the person's own expense.

SECTION 2. IC 10-13-3-36, AS AMENDED BY P.L.2-2007, SECTION 147, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 36. (a) The department may not charge a fee for responding to a request for the release of a limited criminal history record if the request is made by a nonprofit organization:

- (1) that has been in existence for at least ten (10) years; and
- (2) that:

(A) has a primary purpose of providing an individual relationship for a child with an adult volunteer if the request is made as part of a background investigation of a prospective adult volunteer for the organization;

(B) is a home health agency licensed under IC 16-27-1;

(C) is a community mental retardation and other developmental disabilities center (as defined in IC 12-7-2-39);

(D) is a supervised group living facility licensed under IC 12-28-5;

(E) is an area agency on aging designated under IC 12-10-1;

(F) is a community action agency (as defined in IC 12-14-23-2);

(G) is the owner or operator of a hospice program licensed under IC 16-25-3; or

(H) is a community mental health center (as defined in IC 12-7-2-38).

(b) Except as provided in subsection (d), the department may not charge a fee for responding to a request for the release of a limited criminal history record made by the department of child services or the

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division of family resources if the request is made as part of a background investigation of an applicant for a license under IC 12-17.2 or IC 31-27.

(c) The department may not charge a fee for responding to a request for the release of a limited criminal history if the request is made by a school corporation, special education cooperative, or nonpublic school (as defined in IC 20-18-2-12) as part of a background investigation of a prospective or current employee or a prospective or current adult volunteer for the school corporation, special education cooperative, or nonpublic school.

(d) As used in this subsection, "state agency" means an authority, a board, a branch, a commission, a committee, a department, a division, or another instrumentality of state government, including the executive and judicial branches of state government, the principal secretary of the senate, the principal clerk of the house of representatives, the executive director of the legislative services agency, a state elected official's office, or a body corporate and politic, but does not include a state educational institution. The department may not charge a fee for responding to a request for the release of a limited criminal history if the request is made:

- (1) by a state agency; and
- (2) through the computer gateway that is administered by the office of technology established by IC 4-13.1-2-1.

(e) The department may not charge a fee for responding to a request for the release of a limited criminal history record made by the Indiana professional licensing agency established by IC 25-1-5-3 if the request is:

- (1) made through the computer gateway that is administered by the office of technology; and
- (2) part of a background investigation of a practitioner or an individual who has applied for a license issued by a board (as defined in IC 25-1-9-1).

(f) The department may not charge a church or religious society a fee for responding to a request for the release of a limited criminal history record if:

- (1) the church or religious society is a religious organization exempt from federal income taxation under Section 501 of the Internal Revenue Code;
- (2) the request is made as part of a background investigation of a prospective or current employee or a prospective or current adult volunteer; and
- (3) the employee or volunteer works in a nonprofit program or

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ministry of the church or religious society, including a child care ministry registered under IC 12-17.2-6.

(g) The department may not charge the school of education of a public or private postsecondary educational institution a fee for responding to a request for the release of a limited criminal history record if the request is made as part of a background investigation of a student before or after the student begins the student's field or classroom experience. However, the department may charge the student a fee for responding to a request for the release of a limited criminal history record.

SECTION 3. IC 13-19-5-3, AS AMENDED BY P.L.221-2007, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) The authority shall do the following under this chapter:

- (1) Be responsible for the management of all aspects of the program.
- (2) Prepare and provide program information.
- (3) Negotiate the negotiable aspects of each financial assistance agreement and submit the agreement to the budget agency for approval.
- (4) Sign each financial assistance agreement.
- (5) Review each proposed project and financial assistance agreement to determine if the project meets the credit, economic, or fiscal criteria established by guidelines of the authority.
- (6) Periodically inspect or cause to be inspected projects to determine compliance with this chapter.
- (7) Conduct or cause to be conducted an evaluation concerning the financial ability of a political subdivision to:
 - (A) pay a loan or other financial assistance and other obligations evidencing loans or other financial assistance, if required to be paid; and
 - (B) otherwise comply with terms of the financial assistance agreement.
- (8) Evaluate or cause to be evaluated the technical aspects of the political subdivision's:
 - (A) environmental assessment of potential brownfield properties;
 - (B) proposed remediation; and
 - (C) remediation activities conducted on brownfield properties.
- (9) Inspect or cause to be inspected remediation activities conducted under this chapter.
- (10) Act as a liaison to the United States Environmental

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Protection Agency regarding the program.

(11) Be a point of contact for political subdivisions concerning questions about the program.

(12) Enter into memoranda of understanding, as necessary, with the department and the budget agency concerning the administration and management of the fund and the program.

(b) The authority may do the following under this chapter:

(1) Undertake activities to make private environmental insurance products available to encourage and facilitate the cleanup and redevelopment of brownfield properties.

(2) Enter into agreements with political subdivisions to manage any of the following conducted on brownfield properties:

(A) Environmental assessment activities.

(B) Environmental remediation activities.

(c) The authority may:

(1) negotiate with;

(2) select; and

(3) contract with;

one (1) or more insurers to provide insurance products as described in subsection (b)(1).

(d) Notwithstanding IC 13-23, IC 13-24-1, and IC 13-25-4, the authority is not liable for any contamination addressed by the authority under an agreement under subsection (b)(2) unless existing contamination on the brownfield is exacerbated due to gross negligence or intentional misconduct by the authority.

(e) For purposes of subsection (d), reckless, willful, or wanton misconduct constitutes gross negligence.

(f) The authority is entitled to the same governmental immunity afforded a political subdivision under ~~IC 34-13-3-3(23)~~ **IC 34-13-3-3(22)** for any act taken to investigate or remediate hazardous substances, petroleum, or other pollutants associated with a brownfield under an agreement under subsection (b)(2).

SECTION 4. IC 20-19-3-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 9. The department shall establish and maintain a searchable data base of information concerning employees and former employees who have been reported to the department under IC 20-28-5-8. The department shall make the data base available to the public.**

SECTION 5. IC 20-24-8-5, AS AMENDED BY P.L.2-2006, SECTION 111, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 5. The following statutes and rules**

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and guidelines adopted under the following statutes apply to a charter school:

- (1) IC 5-11-1-9 (required audits by the state board of accounts).
- (2) IC 20-39-1-1 (unified accounting system).
- (3) IC 20-35 (special education).
- (4) IC 20-26-5-10 ~~and IC 20-28-5-9~~ (criminal history).
- (5) IC 20-26-5-6 (subject to laws requiring regulation by state agencies).
- (6) IC 20-28-7-14 (void teacher contract when two (2) contracts are signed).
- (7) IC 20-28-10-12 (nondiscrimination for teacher marital status).
- (8) IC 20-28-10-14 (teacher freedom of association).
- (9) IC 20-28-10-17 (school counselor immunity).
- (10) For conversion charter schools only, IC 20-28-6, IC 20-28-7, IC 20-28-8, IC 20-28-9, and IC 20-28-10.
- (11) IC 20-33-2 (compulsory school attendance).
- (12) IC 20-33-3 (limitations on employment of children).
- (13) IC 20-33-8-19, IC 20-33-8-21, and IC 20-33-8-22 (student due process and judicial review).
- (14) IC 20-33-8-16 (firearms and deadly weapons).
- (15) IC 20-34-3 (health and safety measures).
- (16) IC 20-33-9 (reporting of student violations of law).
- (17) IC 20-30-3-2 and IC 20-30-3-4 (patriotic commemorative observances).
- (18) IC 20-31-3, IC 20-32-4, IC 20-32-5, IC 20-32-6, IC 20-32-8, or any other statute, rule, or guideline related to standardized testing (assessment programs, including remediation under the assessment programs).
- (19) IC 20-33-7 (parental access to education records).
- (20) IC 20-31 (accountability for school performance and improvement).

SECTION 6. IC 20-26-1-1, AS ADDED BY P.L.1-2005, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. **(a)** IC 20-26-1 through IC 20-26-5 and IC 20-26-7 apply to all school corporations.

(b) Notwithstanding subsection (a), IC 20-26-5-10 applies to:

- (1) a school corporation;**
- (2) a charter school; and**
- (3) an accredited nonpublic school.**

SECTION 7. IC 20-26-2-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 1.5. "Expanded criminal history check" means a**

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criminal history background check of an individual that includes:

(1) a:

(A) search of the records maintained by all counties in Indiana in which the individual who is the subject of the background check resided;

(B) search of the records maintained by all counties or similar governmental units in another state, if the individual who is the subject of the background check resided in another state; and

(C) check of:

(i) sex offender registries in all fifty (50) states; or

(ii) the national sex offender registry maintained by the United States Department of Justice; or

(2) a:

(A) national criminal history background check (as defined in IC 10-13-3-12); and

(B) check of:

(i) sex offender registries in all fifty (50) states; or

(ii) the national sex offender registry maintained by the United States Department of Justice.

SECTION 8. IC 20-26-5-10, AS ADDED BY P.L.1-2005, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. (a) A school corporation, including a ~~school township~~ **charter school and an accredited nonpublic school**, shall adopt a policy concerning criminal history information for individuals who:

(1) apply for:

(A) employment with the school corporation; or

(B) employment with an entity with which the school corporation contracts for services;

(2) seek to enter into a contract to provide services to the school corporation; or

(3) are employed by an entity that seeks to enter into a contract to provide services to the school corporation;

if the individuals are likely to have direct, ongoing contact with children within the scope of the individuals' employment.

(b) A school corporation, including a ~~school township~~ **charter school and an accredited nonpublic school**, shall administer a policy adopted under this section uniformly for all individuals to whom the policy applies. A policy adopted under this section ~~may~~ **must** require ~~any of the following: that the school corporation, charter school, or accredited nonpublic school conduct an expanded criminal history~~

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(1) The school corporation, including a school township, may request limited criminal history information concerning each applicant for noncertificated employment or certificated employment from a local or state law enforcement agency before or not later than three (3) months after the applicant's employment by the school corporation, **charter school, or accredited nonpublic school**.

(2) Each individual hired for noncertificated employment or certificated employment may be required to provide a written consent for the school corporation, **charter school, or accredited nonpublic school** to request ~~under IC 10-13-3~~ limited criminal history information or a national criminal history background **an expanded criminal history** check concerning the individual before or not later than three (3) months after the individual's employment by the school corporation. The school corporation, **charter school, or accredited nonpublic school** may require the individual to provide a set of fingerprints and pay any fees required for a national criminal history background ~~the expanded criminal history~~ check.

(3) Each individual hired for noncertificated employment may be required at the time the individual is hired to submit a certified copy of the individual's limited criminal history (as defined in IC 10-13-3-11) to the school corporation:

(4) Each individual hired for noncertificated employment may be required at the time the individual is hired to:

(A) submit a request to the Indiana central repository for limited criminal history information under IC 10-13-3;

(B) obtain a copy of the individual's limited criminal history; and

(C) submit to the school corporation the individual's limited criminal history and a document verifying a disposition (as defined in IC 10-13-3-7) that does not appear on the limited criminal history.

(5) Each applicant for noncertificated employment or certificated employment may be required at the time the individual applies to answer questions concerning the individual's ~~limited~~ **expanded criminal history check**. The failure to answer honestly questions asked under this ~~subdivision~~ **subsection** is grounds for termination of the employee's employment.

(6) Each individual that:

(A) seeks to enter into a contract to provide services to a

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school corporation; or

(B) is employed by an entity that seeks to enter into a contract with a school corporation;

may be required at the time the contract is formed to comply with the procedures described in subdivisions (2), (4), and (5). An individual who is employed by an entity that seeks to enter into a contract with a school corporation to provide student services in which the entity's employees have direct contact with students in a school based program may be required to provide the consent described in subdivision (2) or the information described in subdivisions (4) and (5) to either the individual's employer or the school corporation. Failure to comply with subdivisions (2), (4), and (5), as required by the school corporation, is grounds for termination of the contract. An entity that enters into a contract with a school corporation to provide student services in which the entity's employees have direct contact with students in a school based program is allowed to obtain limited criminal history information or a national criminal history background check regarding the entity's applicants or employees in the same manner that a school corporation may obtain the information.

(c) If an individual is required to obtain a limited criminal history under this section, the individual is responsible. **The applicant is responsible** for all costs associated with obtaining the limited expanded criminal history check. **An applicant may not be required by a school corporation, charter school, or accredited nonpublic school to obtain an expanded criminal history check more than one (1) time during a five (5) year period.**

~~(d)~~ (c) Information obtained under this section must be used in accordance with ~~IC 10-13-3-29~~ law.

SECTION 9. IC 20-28-4-11, AS ADDED BY P.L.150-2006, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 11. (a) This section applies only to:

- (1) a school corporation; or
- (2) a subject area;

that is designated by the state board as having an insufficient supply of licensed teachers.

(b) The governing body of a school corporation or the appointing authority of an accredited nonpublic school may employ a program participant if the program participant is hired to teach in a subject area or a school corporation to which this section applies.

(c) Before employing a program participant under subsection (b), the superintendent of the school corporation must make a

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determination that one (1) of the following conditions exists:

- (1) There is no fully certified and highly qualified teacher available for the position.
- (2) The program participant is the best qualified candidate for the position.

(d) A program participant who is employed under this section is eligible to receive a transition to teaching permit. The transition to teaching permit is valid for three (3) years, and may not be renewed. ~~IC 20-28-5-9 applies to a program participant who applies for a transition to teaching permit.~~

(e) A program participant who is employed under this section:

- (1) shall enter into either:
 - (A) a regular teacher's contract under IC 20-28-6-5; or
 - (B) a temporary teacher's contract under IC 20-28-6-6, if replacing a teacher on a leave of absence;
- (2) is eligible to participate in a mentor teacher program; and
- (3) satisfies the field or classroom experience component of the program under section 4(3) of this chapter.

(f) The state board:

- (1) shall review; and
- (2) may renew;

the designation of a school corporation or a subject area as having an insufficient supply of licensed teachers not more than two (2) years following the initial designation under subsection (a).

SECTION 10. IC 20-28-5-8, AS AMENDED BY P.L.151-2006, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) This section applies when a prosecuting attorney knows that a licensed employee of a public school or a nonpublic school has been convicted of an offense listed in subsection (c). The prosecuting attorney shall immediately give written notice of the conviction to the following:

- (1) The state superintendent.
- (2) Except as provided in subdivision (3), the superintendent of the school corporation that employs the licensed employee or the equivalent authority if a nonpublic school employs the licensed employee.
- (3) The presiding officer of the governing body of the school corporation that employs the licensed employee, if the convicted licensed employee is the superintendent of the school corporation.

(b) The superintendent of a school corporation, presiding officer of the governing body, or equivalent authority for a nonpublic school shall immediately notify the state superintendent when the individual knows

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that a current or former licensed employee of the public school or nonpublic school has been convicted of an offense listed in subsection (c), **or when the governing body or equivalent authority for a nonpublic school takes any final action in relation to an employee who engaged in any offense listed in subsection (c).**

(c) The department, after holding a hearing on the matter, shall permanently revoke the license of a person who is known by the department to have been convicted of any of the following felonies:

- (1) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age.
- (2) Criminal confinement (IC 35-42-3-3), if the victim is less than eighteen (18) years of age.
- (3) Rape (IC 35-42-4-1), if the victim is less than eighteen (18) years of age.
- (4) Criminal deviate conduct (IC 35-42-4-2), if the victim is less than eighteen (18) years of age.
- (5) Child molesting (IC 35-42-4-3).
- (6) Child exploitation (IC 35-42-4-4(b)).
- (7) Vicarious sexual gratification (IC 35-42-4-5).
- (8) Child solicitation (IC 35-42-4-6).
- (9) Child seduction (IC 35-42-4-7).
- (10) Sexual misconduct with a minor (IC 35-42-4-9).
- (11) Incest (IC 35-46-1-3), if the victim is less than eighteen (18) years of age.
- (12) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).
- (13) Dealing in methamphetamine (IC 35-48-4-1.1).
- (14) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
- (15) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
- (16) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- (17) Dealing in a counterfeit substance (IC 35-48-4-5).
- (18) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10(b)).
- (19) Possession of child pornography (IC 35-42-4(c)).**

(d) A license may be suspended by the state superintendent as specified in IC 20-28-7-7.

(e) The department shall develop a data base of information on school corporation employees who have been reported to the department under this section.

SECTION 11. IC 20-28-5-15, AS ADDED BY P.L.75-2008,



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SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 15. (a) Notwithstanding section 3(b)(6) of this chapter, the department shall grant an initial practitioner's license in a specific subject area to an applicant who:

- (1) has earned a postgraduate degree from a regionally accredited postsecondary educational institution in the subject area in which the applicant seeks to be licensed;
- (2) has at least one (1) academic year of experience teaching students in a middle school, high school, or college classroom setting; and
- (3) complies with sections 4 ~~9~~ and 12 of this chapter.

(b) An individual who receives an initial practitioner's license under this section may teach in the specific subject for which the individual is licensed only in:

- (1) high school; or
- (2) middle school;

if the subject area is designated by the state board as having an insufficient supply of licensed teachers.

(c) After receiving an initial practitioner's license under this section, an applicant who seeks to renew the applicant's initial practitioner's license or obtain a proficient practitioner's license must:

- (1) demonstrate that the applicant has:
 - (A) participated in cultural competency professional development activities;
 - (B) obtained training and information from a special education teacher concerning exceptional learners; and
 - (C) received:
 - (i) training or certification that complies; or
 - (ii) an exemption from compliance;
 with the standards set forth in section 3(c) of this chapter; and
- (2) meet the same requirements as other candidates.

SECTION 12. IC 20-33-8-8, AS ADDED BY P.L.1-2005, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) Student supervision and the desirable behavior of students in carrying out school purposes is the responsibility of:

- (1) a school corporation; and
- (2) the students of a school corporation.

(b) In all matters relating to the discipline and conduct of students, school corporation personnel:

- (1) stand in the relation of parents to the students of the school corporation; ~~and~~

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- (2) have the right to take any disciplinary action necessary to promote student conduct that conforms with an orderly and effective educational system, subject to this chapter; **and**
- (3) have qualified immunity with respect to a disciplinary action taken to promote student conduct under subdivision (2) if the action is taken in good faith and is reasonable.**

(c) Students must:

- (1) follow responsible directions of school personnel in all educational settings; and
- (2) refrain from disruptive behavior that interferes with the educational environment.

SECTION 13. IC 20-33-8-9, AS ADDED BY P.L.1-2005, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) This section applies to an individual who:

- (1) is a teacher or other school staff member; and
- (2) has students under the individual's charge.

(b) An individual may take any action that is reasonably necessary to carry out or to prevent an interference with an educational function that the individual supervises.

(c) Subject to rules of the governing body and the administrative staff, an individual may remove a student for a period that does not exceed five (5) school days from an educational function supervised by the individual or another individual who is a teacher or other school staff member.

(d) If an individual removes a student from a class under subsection (c), the principal may place the student in another appropriate class or placement or into inschool suspension. The principal may not return the student to the class from which the student was removed until the principal has met with the student, the student's teacher, and the student's parents to determine an appropriate behavior plan for the student. If the student's parents do not meet with the principal and the student's teacher within a reasonable amount of time, the student may be moved to another class at the principal's discretion.

SECTION 14. IC 34-6-2-38, AS AMENDED BY P.L.1-2007, SECTION 223, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 38. (a) "Employee" and "public employee", for purposes of section 91 of this chapter, IC 34-13-2, IC 34-13-3, IC 34-13-4, and IC 34-30-14, mean a person presently or formerly acting on behalf of a governmental entity, whether temporarily or permanently or with or without compensation, including

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members of boards, committees, commissions, authorities, and other instrumentalities of governmental entities, volunteer firefighters (as defined in IC 36-8-12-2), and elected public officials.

(b) The term also includes attorneys at law whether employed by the governmental entity as employees or independent contractors and physicians licensed under IC 25-22.5 and optometrists who provide medical or optical care to confined offenders (as defined in IC 11-8-1) within the course of their employment by or contractual relationship with the department of correction. However, the term does not include:

- (1) an independent contractor (other than an attorney at law, a physician, or an optometrist described in this section);
- (2) an agent or employee of an independent contractor;
- (3) a person appointed by the governor to an honorary advisory or honorary military position; or
- (4) a physician licensed under IC 25-22.5 with regard to a claim against the physician for an act or omission occurring or allegedly occurring in the physician's capacity as an employee of a hospital.

~~(c) A physician licensed under IC 25-22.5 who is an employee of a governmental entity (as defined in section 49 of this chapter) shall be considered a public employee for purposes of IC 34-13-3-3(21).~~

~~(d)~~ (c) For purposes of IC 34-13-3 and IC 34-13-4, the term includes a person that engages in an act or omission before July 1, 2004, in the person's capacity as:

- (1) a contractor under IC 6-1.1-4-32 (repealed);
- (2) an employee acting within the scope of the employee's duties for a contractor under IC 6-1.1-4-32 (repealed);
- (3) a subcontractor of the contractor under IC 6-1.1-4-32 (repealed) that is acting within the scope of the subcontractor's duties; or
- (4) an employee of a subcontractor described in subdivision (3) that is acting within the scope of the employee's duties.

SECTION 15. IC 34-13-3-3, AS AMENDED BY P.L.47-2006, SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. A governmental entity or an employee acting within the scope of the employee's employment is not liable if a loss results from the following:

- (1) The natural condition of unimproved property.
- (2) The condition of a reservoir, dam, canal, conduit, drain, or similar structure when used by a person for a purpose that is not foreseeable.
- (3) The temporary condition of a public thoroughfare or extreme sport area that results from weather.

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(4) The condition of an unpaved road, trail, or footpath, the purpose of which is to provide access to a recreation or scenic area.

(5) The design, construction, control, operation, or normal condition of an extreme sport area, if all entrances to the extreme sport area are marked with:

- (A) a set of rules governing the use of the extreme sport area;
- (B) a warning concerning the hazards and dangers associated with the use of the extreme sport area; and
- (C) a statement that the extreme sport area may be used only by persons operating extreme sport equipment.

This subdivision shall not be construed to relieve a governmental entity from liability for the continuing duty to maintain extreme sports areas in a reasonably safe condition.

(6) The initiation of a judicial or an administrative proceeding.

(7) The performance of a discretionary function; however, the provision of medical or optical care as provided in IC 34-6-2-38 shall be considered as a ministerial act.

(8) The adoption and enforcement of or failure to adopt or enforce a law (including rules and regulations), unless the act of enforcement constitutes false arrest or false imprisonment.

(9) An act or omission performed in good faith and without malice under the apparent authority of a statute which is invalid if the employee would not have been liable had the statute been valid.

(10) The act or omission of anyone other than the governmental entity or the governmental entity's employee.

(11) The issuance, denial, suspension, or revocation of, or failure or refusal to issue, deny, suspend, or revoke any permit, license, certificate, approval, order, or similar authorization, where the authority is discretionary under the law.

(12) Failure to make an inspection, or making an inadequate or negligent inspection, of any property, other than the property of a governmental entity, to determine whether the property complied with or violates any law or contains a hazard to health or safety.

(13) Entry upon any property where the entry is expressly or impliedly authorized by law.

(14) Misrepresentation if unintentional.

(15) Theft by another person of money in the employee's official custody, unless the loss was sustained because of the employee's own negligent or wrongful act or omission.

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(16) Injury to the property of a person under the jurisdiction and control of the department of correction if the person has not exhausted the administrative remedies and procedures provided by section 7 of this chapter.

(17) Injury to the person or property of a person under supervision of a governmental entity and who is:

(A) on probation; or

(B) assigned to an alcohol and drug services program under IC 12-23, a minimum security release program under IC 11-10-8, a pretrial conditional release program under IC 35-33-8, or a community corrections program under IC 11-12.

(18) Design of a highway (as defined in IC 9-13-2-73), toll road project (as defined in IC 8-15-2-4(4)), tollway (as defined in IC 8-15-3-7), or project (as defined in IC 8-15.7-2-14) if the claimed loss occurs at least twenty (20) years after the public highway, toll road project, tollway, or project was designed or substantially redesigned; except that this subdivision shall not be construed to relieve a responsible governmental entity from the continuing duty to provide and maintain public highways in a reasonably safe condition.

(19) Development, adoption, implementation, operation, maintenance, or use of an enhanced emergency communication system.

(20) Injury to a student or a student's property by an employee of a school corporation if the employee is acting reasonably under a discipline policy adopted under ~~IC 20-33-8-7(b)~~; **IC 20-33-8-12**.

~~(21) An error resulting from or caused by a failure to recognize the year 1999, 2000, or a subsequent year, including an incorrect date or incorrect mechanical or electronic interpretation of a date, that is produced, calculated, or generated by:~~

~~(A) a computer;~~

~~(B) an information system; or~~

~~(C) equipment using microchips;~~

~~that is owned or operated by a governmental entity. However, this subdivision does not apply to acts or omissions amounting to gross negligence, willful or wanton misconduct, or intentional misconduct. For purposes of this subdivision, evidence of gross negligence may be established by a party by showing failure of a governmental entity to undertake an effort to review, analyze, remediate, and test its electronic information systems or by showing failure of a governmental entity to abate, upon notice, an~~

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~~electronic information system error that caused damage or loss.~~
~~However, this subdivision expires June 30, 2003.~~

~~(22)~~ (21) An act or omission performed in good faith under the apparent authority of a court order described in IC 35-46-1-15.1 that is invalid, including an arrest or imprisonment related to the enforcement of the court order, if the governmental entity or employee would not have been liable had the court order been valid.

~~(23)~~ (22) An act taken to investigate or remediate hazardous substances, petroleum, or other pollutants associated with a brownfield (as defined in IC 13-11-2-19.3) unless:

(A) the loss is a result of reckless conduct; or

(B) the governmental entity was responsible for the initial placement of the hazardous substances, petroleum, or other pollutants on the brownfield.

SECTION 16. IC 34-30-2-84.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 84.7. IC 20-33-8-8 (Concerning school corporation personnel who take reasonable actions concerning school discipline).**

SECTION 17. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2009]: IC 20-28-1-8; IC 20-28-5-9.

SECTION 18. **An emergency is declared for this act.**

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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HEA 1462 — Concur+

